

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHEFENIA L MAGEE,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of the
Social Security Administration,

Defendant.

Case No. C10-1821-RSM-BAT

**REPORT AND
RECOMMENDATION**

Shefenia L. Magee filed an action seeking review of the denial of Social Security benefits on November 8, 2010. Dkt. 1. On March 24, 2011, the Commissioner moved to remand the action pursuant to sentence six¹ on the grounds the claim file cannot be located. Dkt. 11. Ms. Magee has no objection to a sentence six remand but requests the Court order a new hearing if the Commissioner cannot locate or reconstruct the administrative record within 90 days. Dkt. 12. The Commissioner opposes the setting of a hard and fast deadline.

While Ms. Magee does not have an automatic right to a new hearing if the record cannot be found or reconstructed within 90 days, her case should be resolved in a fair and expeditious manner. In order to balance her right to an expeditious resolution with the challenges the Commissioner faces in reconstructing the record, the Court recommends that the

¹ See § 205(g) and 1631(c)(3) of the Social Security Act, 41 U.S.C. §§ 405(g) and 1383(c)(3).

Commissioner's motion for remand be **GRANTED** and this case be **REMANDED** to the Commissioner for further administrative proceedings pursuant to sentence six of 42 U.S.C. § 405(g) as follows:

(1) Upon remand, the Commissioner shall promptly prepare or locate a complete certified administrative record.

(2) If the Commissioner is unable to do so, the Administrative Law Judge shall promptly reconstruct the administrative record and hold another hearing and issue another decision.

(3) The parties shall file status reports in 90 days from the date the Court grants the Commissioner's motion so the Court can determine whether additional action is warranted.

(4) The Court shall retain jurisdiction over this action pending further administrative development of the record pursuant to 42 U.S.C. § 405(g). If the outcome of a de novo hearing is unfavorable to Ms. Magee, she may seek judicial review by reinstating this case, rather than filing a new complaint.

A proposed order accompanies this Report and Recommendation. Any objections to this Report and Recommendation must be filed and served upon all parties no later than **May 6, 2011**.

DATED this 22nd day of April, 2011.



BRIAN A. TSUCHIDA
United States Magistrate Judge